IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11131 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAYBHAI DAYARAM KAHAR

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 11131 of 2002

MR JAYESH A DAVE for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged the detention order dated 3.9.2002 by which he

is detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) as a "dangerous person".

#. Along with the detention order, the detenu was served with the grounds of detention. In the said grounds, there is a reference about two criminal cases, which are pending against the petitioner under various sections of IPC. The authority, after having been satisfied about the illegal activities of the petitioner, has detained the petitioner under the preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the last case registered against the petitioner is of 2.3.2002, yet the detention order is passed on 3.9.2002, i.e. after a long period. For that purpose, learned advocate for the petitioner has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein in para 21, the Court observed as under.:

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

#. Considering the aspect of inordinate delay in passing the detention order after the last incident and considering the judgment referred to above, the detention order is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 3.9.2002 is quashed and set aside. The detenu Vijaybhai Dayarambhai Kahar is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)